vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2487 OF 2006

Mrs.Hamida Mohammed Amin Desai ... Petitioner

V/s.

Union of India & Ors. ... Respondents

Mr.V.S. Nankani with Mr.M.R. Baya for Petitioner
Mrs.S.V. Bharucha for Respondent No.1

CORAM: **R.M. LODHA &**
SMT.NISHITA MHATRE, JJ.

DATED: **JANUARY 15, 2007**

P.C.:

. We heard Mr.Vikram Nankani, the Counsel for the Petitioner.

2. The Petitioner is not entitled to invoke the extraordinary jurisdiction of this Court. The reasons therefor are more than one. For one, the impugned order dated 14.10.1999 was challenged by the Petitioner's husband in appeal under section 12(4) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. The said appeal was dismissed by the Appellate Tribunal for Forfeited Property, New Delhi on August 9, 2000. Nothing has been shown that the order passed by the Appellate Tribunal came to be challenged. The order of the Appellate Tribunal dated

9.8.2000, in the circumstances, has already acquired finality. The other that the order dated 14.10.1999 passed under sections 7 and 19 of the Act of 1976 is now sought to be challenged directly before this Court by the Petitioner after almost 7 years of the said order having been passed. The challenge to the order dated 14.10.1999 suffers from gross laches and inordinate delay. The Counsel for the Petitioner sought to get out of this difficulty by submitting that the impugned order is void and in this view of the matter, laches or the delay have no impediment for the challenge to the impugned order in the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. He places reliance on the Division Bench of this Court in the case of *Bimalnath v/s. Union of India,* **2005(6) Bom. C.R. 526**. At this stage itself, we may say that the judgment of the Division Bench of this Court in *Bimalnath (supra)* has no application to the facts of the present case. Here is a case where the impugned order was directly under challenge in appeal under section 12(4) of the Act of 1976 by none other than the Petitioner's husband. That the Petitioner and her husband are living together under the same roof is not in dispute. The fact that the Petitioner's husband challenged the impugned order within the limitation prescribed under law in the year 1999 itself leads us to

disbelieve the explanation given by the Petitioner in paragraph 8 of the Writ Petition. The Counsel for the Petitioner did not dispute that after the year 1999, the Petitioner has visited India on various occasions and the first of such visit was in July 2000 itself. It is unbelievable that the Petitioner would not be aware of the order passed on 14.10.1999 when she visited India in July 2000, even if we assume for the sake of argument that the Petitioner's husband did not inform the Petitioner about the impugned order dated 14.10.1999. Even after the visit that the Petitioner had in July 2000, she visited India on various occasions but at no point of time she took steps in challenging the impugned order. As a matter of fact, the challenge to the impugned order by means of this Writ Petition directly before this Court by the Petitioner is a subterfuge adopted by the Petitioner to overcome the order dated August 9, 2000 passed by the Appellate Tribunal in the Appeal preferred by the Petitioner's husband.

3. The Writ Petition is nothing but an abuse of the process of the Court. It is dismissed in limine.

(R.M. Lodha, J.)

(Nishita Mhatre, J.)